# TIME FOR CHANGE: ONTARIO'S EMPLOYMENT STANDARDS LEGISLATION

**A Consultation Paper *and* Backgrounders**
**July, 2000**

Ontario

# TIME FOR CHANGE: ONTARIO'S EMPLOYMENT STANDARDS LEGISLATION

***A Consultation Paper***

**Ministry of Labour**
**July 2000**

## ABOUT THIS DOCUMENT

The time has come to ensure that employment standards legislation helps Ontarians meet the opportunities and challenges of the 21st Century. The government has initiated a comprehensive review of the *Employment Standards Act* (ESA) and related workplace legislation.

This consultation paper sets out some proposed directions for a new employment standards act for Ontario. If you are an employer, employee or an employee's representative you are directly affected by the legislation that determines employment and workplace standards. Your basic rights and obligations are set out in these laws. This paper provides an opportunity to participate in an important and timely process of

renewing employment standards legislation.

The review has two objectives: first, to fulfil the *Blueprint* commitments the government made to the people of Ontario; secondly, to modernize and clarify the current legislation.

This paper is divided into two parts. **Part One** includes the review objectives and a summary of the proposed directions. **Part Two** presents proposed directions in greater detail and poses *Questions for Discussion*.

The government is interested in hearing your views on the specific proposals and questions raised in this paper, as well as any general comments or suggestions you have about reforming employment standards legislation. It will be holding public consultations in August and September to receive your input. At the end of this paper, you will find information about the consultation process, how to provide your input, and where you can get additional copies of this paper.

The government intends to introduce new employment standards legislation later this year. This is your opportunity to affect the renewal of this important legislation.

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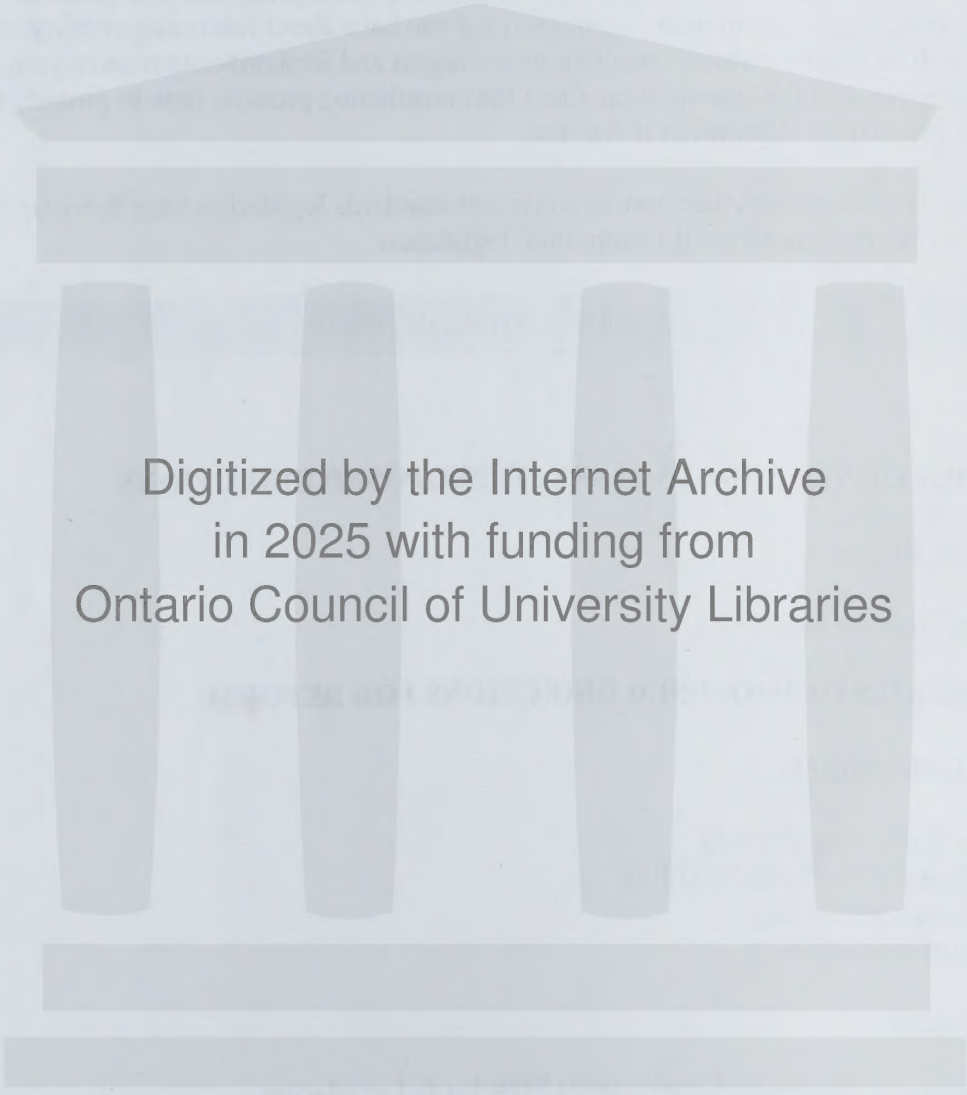

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## INTRODUCTION

## The need for action

Modern workplaces are flexible and respond swiftly to new challenges. The hallmarks of economic success are adaptability and creativity. Today's workplaces are constantly being transformed as employers and employees rise to new challenges and seize fresh opportunities for growth.

Employers and employees, however, have told the government that Ontario's employment standards legislation stands in the way of these opportunities. The *Employment Standards Act* (ESA), for example, is cumbersome, complicated, confusing and outdated. This legislation - which hasn't had a major overhaul in more than two decades - is filled with the language, concerns and approaches of an earlier era. It discourages growth and innovation, and it no longer serves Ontario's five million employees and their employers.

The government is committed to modernizing the ESA as a foundation for increased productivity, job creation, growth and investment. It will keep its promise to provide Ontario workplaces with the flexible, modern labour legislation they need to play a vital part in this province's unprecedented economic boom.

The Red Tape Commission, in its consultations with business, institutions and individuals, has identified a number of changes to improve workplace flexibility. Simplifying the ESA and reducing red tape will contribute directly to the health of the Ontario economy by lowering business costs.

The government will promote job creation, improve work and family balance and raise the quality of life in Ontario by implementing its *Blueprint* commitments:

- To provide employers and employees with the opportunity to design work arrangements that fit their business and personal needs, and
- To provide employees with up to 10 unpaid days per year of job-protected family crisis leave in workplaces of more than 50 employees.

The government will also make the ESA clearer and more understandable. This will promote greater compliance by all workplace parties, resulting in enhanced protection for workers and a more level playing field for all employers.

## Background

The *Employment Standards Act* (ESA) is the law that sets out basic rules for working in Ontario. It was

created in 1968 by combining several earlier laws that regulated various aspects of the employment relationship.

The current ESA framework consists of both legislative and regulatory provisions. It sets out who is covered by the legislation, then outlines basic standards of employment (e.g. hours of work, vacation and public holiday entitlements, rights to pregnancy and parental leave). It provides for its administration and enforcement by the Ministry of Labour, through the courts, or through the grievance procedure in unionized workplaces.

Despite many attempts at reform by previous governments, the ESA has not been comprehensively overhauled in more than two decades. Consequently, there is need for a thorough review and an expectation of broad reform among most stakeholders. Some 500 Ontario businesses and institutions surveyed by the Red Tape Commission identified reform of the ESA as a top priority to improve the province's competitive status as a place to invest.

Through submissions, letters and discussions, employers, employees and trade unions have told the government that the basic rules for Ontario's workplaces are out-of-date. The laws no longer reflect the characteristics and needs of modern workplaces and are difficult to understand and comply with.

The government's recent legislative initiatives have been aimed at improving Ontario's competitiveness to encourage strong economic growth and job creation. In 1996, a number of changes were made to the ESA under Bill 49, An Act to Improve the *Employment Standards Act*. These changes were aimed at improving the effectiveness and efficiency of administering the ESA.

In 1998, the government continued the dialogue on change with the release of the Future of Work in Ontario discussion paper.

Last year, in its election document, *Blueprint*, the government promised to give employers and employees greater flexibility in designing work arrangements and to provide a family-crisis leave provision.

Our workplaces are changing. Greater freedom in trade rules, increased competition, technological advances, changing product and service markets, along with shifting workforce demographics, are continuing to reshape how, where and when work is performed.

Employers are restructuring firms, introducing new technology, production and delivery systems, and developing new ways to work in an effort to improve their productivity and ability to respond quickly to market demands. Employees are attaining higher levels of education, updating skills or entering new professions, and seeking more involvement in decision-making in the workplace. They are also looking for ways to balance their working life with family and community responsibilities.

The workplaces and workers of Ontario are flexible, modern and adaptable. Employment standards legislation should be equally so.

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**Part One -OBJECTIVES AND SUMMARY OF PROPOSED DIRECTIONS**

# 1. Objectives for Review

This review has two overall objectives:

- to implement the *Blueprint* commitments;
- to modernize and clarify the legislation.

Ontario needs innovative workplaces that can respond effectively to emerging opportunities to be competitive and to contribute to a high quality of life. This in turn will increase productivity, job creation, growth and investment in Ontario. To support these objectives, employment standards legislation needs to be flexible, modern, efficient, and fair.

A **flexible, modern** ESA would recognize the trend towards more varied work arrangements. It would also recognize that one set of standards may not fit all types of work, occupations or employment relations. It would allow greater choice in designing working arrangements. It would be responsive to the rapid evolutions in technology that are affecting every aspect of workplace life, from how people are paid to how they communicate and do their work.

A **simpler, more efficient** ESA would be streamlined, consistent and easy to understand. It would encourage employers and employees to comply with its provisions.

A **fair** ESA would level the playing field and help ensure that employers do not face unfair competition. It would ensure that all employees in Ontario are treated fairly and have access to basic rights and entitlements at work.

The proposed directions set out in this paper are designed to meet the government's *Blueprint* commitments and renew the relevant legislation. As such, they are aimed at enabling Ontario businesses to be innovative and competitive, to adapt to change, and to be more productive. They are also aimed at maintaining Ontario employees' basic rights and entitlements at work.

Furthermore, they confirm the government's commitment to job creation, economic growth and making Ontario the best place to live, work, invest and raise a family.

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# 2. Summary of Proposed Directions for New Employment Standards Legislation

To achieve its goal of flexibility, simplicity and clarity, the government is proposing the following new commitments, revisions and changes.

## A. Blueprint Commitments

### 1) Flexible Work Arrangements

#### (a) Hours of Work and Overtime

More flexibility would be provided for employers and employees to cooperate in designing work arrangements to meet their needs.

- Current permit system for excess hours eliminated.
- Maximum hours 60 per week; it may be necessary to continue to exempt certain occupations or industries (e.g., construction or agriculture) because of the nature of their work.
- Hours in excess of 48 per week require employees' agreement.
- Employers and employees may agree to alternate work arrangements that allow the maximum 60 hours per week to be averaged over a period not to exceed 3 weeks, subject to daily and weekly rest provisions.
- Daily rest period would provide for consecutive hours off work.
- Continue overtime payable after 44 hours per week.
- Overtime could also be averaged over a period not to exceed 3 weeks and employees may agree to take time off in lieu of overtime pay.

**(b) Vacation with Pay**

- At the written request of the employee, an employer and employee could agree to schedule vacation in daily increments.

**(c) Public Holidays**

- Employers and employees would be given greater flexibility by permitting them to agree to work on the public holiday without the necessity of scheduling a substitute day off. They would have the choice of agreeing *either* to time and a half for the hours worked on the holiday plus a regular day's pay *or* to regular pay for the day and a substitute day off with pay.
- Most qualifying conditions would be eliminated, except the requirement that an employee report for and perform work on the holiday if previously agreed.
- The entitlement to a regular day's pay for the holiday could be pro-rated.

**2) Family Leave**

- A new family leave entitlement would provide Ontario employees, in workplaces with 50 or more employees, with up to 10 days of unpaid, job-protected leave per year to deal with a family crisis, personal or family illness and bereavement situations.
- The leave would apply to a personal illness and to a family crisis, illness or death of the: employee's spouse or same-sex partner, parent, step-parent, child, step-child, brother, sister, grandparent, step-grandparent, grandchild, step-grandchild, child's spouse or same-sex partner, father or mother of spouse or same-sex partner and any relative dependent on the employee for care or assistance.

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## B. Modernizing and Clarifying the Legislation

**Standards to be Updated: No Major Changes Proposed**

**1) Payment of Wages**

- Allow for direct deposit of wages without requiring employee agreement.

**2) Termination and Severance**

- Changes would be made to ensure greater consistency in definitions and in application of the termination and severance provisions.

**Coverage of the Act: Exemptions and Special Rules**

**1) Access to the Act**

- Definitions would be updated to reflect new work arrangements.

**2) Exemptions**

- A policy for assessing whether certain occupations or industries should be exempted from certain standards would be adopted.

**Structural, Administrative and Enforcement Provisions**

**1) Administration**

- Administrative procedures would be made more efficient and fair.
- Definitions and standards in the Act would be clarified and made easier to understand.

**2) Enforcement**

- Escalating monetary penalties would be introduced for violations of the Act.
- A new anti-reprisal provision would be introduced to allow Employment Standards Officers or Labour Relations Officers to reinstate and/or compensate employees who are terminated, disciplined or otherwise penalized for exercising their rights under the Act.

**3) Other Workplace Standards**

- The *One Day's Rest in Seven Act*, the *Industrial Standards Act*, the *Employment Agencies Act*, and the *Government Contracts, Hours and Wages Act* would be repealed.

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**Part Two - DETAILS OF PROPOSED DIRECTIONS FOR REFORM**

# A. Blueprint Commitments

## 1) Flexible Work Arrangements

Today, there is great diversity in the hours worked by employees, a subject which has received much debate. The impact of hours of work on job creation has also received much attention. So has the need to ensure flexible work arrangements that respond to production and delivery systems, while balancing work and family responsibilities.

The current legislation contains restrictive and confusing rules about work arrangements, vacation and

public holidays. Updating and simplifying the legislation will give both employers and employees greater flexibility and a clearer understanding of their rights and responsibilities.

**a) Hours of Work and Overtime**

The current maximum hours of work are 8 in a day and 48 in a week. Overtime must be paid at a rate of time and a half when hours of work exceed 44 in a week. The ESA also allows for the Director of Employment Standards to issue excess hours permits upon application from an employer. These permits allow employers to request their employees to work hours in excess of the maximum, up to limits stated in the permit. The current permit system is perceived as an administrative burden on employers. It is seen as cumbersome, complex, restrictive and ineffective in controlling excess hours.

The current hours of work standards have been criticized by both employer and employee groups. The standards do not always accommodate the needs of employers to run their businesses in a way that meets market pressures, new manufacturing processes or the intensive requirements of high technology industries. The hours of work standards also do not accommodate the needs of employees to vary working hours according to individual preference or to balance work and family responsibilities. As a result, many employers, employees and trade unions have suggested there is widespread non-compliance with these provisions.

## Proposed Direction:

To allow employers and employees to cooperatively design work arrangements, such as flextime or compressed work weeks, that meet their particular needs or circumstances, the hours of work and overtime standards would be amended as follows:

- The current permit system for excess hours would be eliminated.
- There would be a maximum of 60 hours per week. It may be necessary, however, to continue to exempt certain occupations or industries (e.g. construction or agriculture) because of the nature of their work.
- Any hours in excess of 48 per week would require the employee's agreement.
- Employers and employees may agree to alternate work arrangements that allow the maximum 60 hours per week to be averaged over a period not to exceed 3 weeks.
- Daily rest period would provide for consecutive hours off work.
- Overtime would continue to be payable after 44 hours per week and employees may agree to take time off in lieu of overtime pay.
- Overtime would also be averaged over a period not to exceed 3 weeks.
- These arrangements would be subject to daily and weekly rest provisions. The weekly rest provision would be 24 consecutive hours rest in every 7 days or 48 consecutive hours in every 14 days.

***Questions for Discussion***

1. ***Are the hours of work and overtime standards appropriate? Do they provide an appropriate degree of flexibility for employers and employees to design work arrangements that meet their specific circumstances while ensuring that employees are not required to work excessive hours?***
2. ***Should there be a limit on the hours of work by providing for a daily rest period? If so, what should it be?***
3. ***Are the proposed hours of work and overtime standards easy to understand and would they promote compliance?***

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### b) Vacation with Pay

The ESA establishes a minimum standard of two weeks of vacation a year with 4% vacation pay, after 12 full months of employment with the same employer. An employer has the right to schedule vacation, but it must be scheduled no later than the 10-month period following the year it was earned. In addition, the ESA requires employers to schedule vacation in one or two week blocks.

These provisions were designed to permit employees to take time off to meet personal, family or other needs. But they have been criticized for not providing employers and employees with the flexibility to make vacation arrangements that reflect changing needs and situations.

Many employees have said they would prefer to be able to schedule their vacation one or two days at a time, rather than in weekly blocks, to provide for paid time off to deal with personal matters. Employers can benefit from such arrangements since they are often less disruptive, particularly in smaller operations where costs can be incurred in replacing employees who are off for more than a few days at a time. Allowing employees to exercise such preferences could also increase productivity and thereby assist employers.

## Proposed Direction:

The government proposes to take into account changing workforce characteristics and the prevalence of small businesses in Ontario by providing employers and employees with greater flexibility in finding work and vacation arrangements that best meet their needs. The following change would be made to vacation entitlements:

- At the written request of the employee, an employer and employee could agree to schedule vacation in daily increments.

***Questions for Discussion***

1. ***Does the proposed change to vacation with pay entitlements provide employers and employees with the ability to schedule vacation to meet their particular needs or circumstances, while maintaining the basic intent of the standard to provide time away from work?***
2. ***Should any change be made to the current rule that vacation must be scheduled no later than 10 months after the year in which it was earned?***

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**c) Public Holidays**

The current ESA provides for 8 public holidays a year. Employees are entitled to the day off with pay. If they agree to work on the public holiday they are paid at their regular rate and the employer must also provide a substitute day off with pay. Special rules apply to employees who work in hospitals, restaurants, motels, taverns, tourist resorts or continuous operations. They may be required to work the holiday in which case the employer must either schedule a substitute day off with pay or pay time and a half for hours worked plus a regular day's wages.

Currently, in order for an employee to be eligible for a paid public holiday, five qualifying conditions must be met:

1. the employee must be employed for three months or more;
2. the employee must have earned wages on at least 12 days in the four work weeks immediately preceding the holiday;
3. the employee must work the regularly scheduled work day before and after the holiday;
4. the employee must report for and perform work on the holiday if they had previously agreed to; and
5. the employee must not be an elect-to-work employee.

Employers, employees and employment standards practitioners have indicated that it is extremely complicated to determine whether an employee is entitled to a paid public holiday. They have also suggested that greater flexibility could be achieved if employers and employees were able to agree to work on the public holiday for premium pay without the requirement to schedule a substitute day off. In addition, many contingent workers, who represent an increasing percentage of the Ontario workforce, are disentitled from public holiday provisions by the qualifying conditions.

## Proposed Direction:

The government intends to simplify the rules and conditions regarding paid public holidays and ensure that employers and employees have greater flexibility in designing work arrangements. The new act would also recognize that an increasing portion of the Ontario workforce is in non-standard employment relationships. Therefore, the government proposes to make the following changes to the public holiday provisions:

- Employers and employees would be permitted to agree to work on the public holiday without the necessity of scheduling a substitute day off. They would have the choice of agreeing *either* to time and a half for the hours worked on the holiday plus a regular day's pay *or* to regular pay for the day and a substitute day off with pay.

- Provisions affecting continuous operations, hospitals, the leisure and tourist industry would continue to apply.
- Most qualifying conditions would be eliminated, except the requirement that an employee report for and perform work on the holiday if previously agreed.
- The entitlement to a regular day's pay for the holiday would be pro-rated.

***Questions for Discussion***

1. ***Does the removal of the qualifying conditions simplify and provide fair access to the public holiday provisions?***
2. ***Do the proposed reforms give employers and employees the necessary flexibility to design work arrangements that best meet their particular circumstances?***

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## 2) Family Leave

A number of social and demographic changes have led to an interest in developing new leave provisions in employment standards legislation. These changes include:

- an increase in the number of women working outside the home, particularly those with young children;
- an aging population which has produced the "sandwich generation" of adults who, in addition to caring for their young children, are looking after the needs of their elderly or disabled parents;
- changes in the way in which health care is delivered, with the increased focus on providing care outside of institutional facilities.

The goal of leave provisions would be to recognize the various demands Ontario employees face today and to promote a better work-family balance.

The only leave entitlements presently provided in the ESA relate to pregnancy and parental leave. Under these provisions a pregnant employee is entitled to 17 weeks pregnancy leave. Parental leave, available to both new parents, allows each parent 18 weeks of leave. Pregnancy leave must begin no earlier than 17 weeks prior to the expected date of birth. Many other jurisdictions in Canada, as well as in Europe and the United States, provide additional leave entitlements for care of the family, bereavement and other community responsibilities or events.

In the *Blueprint* document, the government committed to providing employees, in businesses with 50 or more employees, with up to 10 days of unpaid, job-protected leave for recognized family and medical reasons. This family leave entitlement recognizes that legitimate medical and other critical situations arise and that employees should not be penalized or faced with job loss when they must take time off work to deal with these situations.

## Proposed Direction:

### a) Family Crisis Leave

The government intends to fulfil the *Blueprint* commitment in a new act. The following are leave entitlements the government is considering:

- A new family leave provision would give Ontario employees, in workplaces of 50 or more employees, the right to take up to 10 days of unpaid, job-protected leave per year to deal with a family crisis, personal or family illness and bereavement situations.
- The leave would apply to a personal illness and to a family crisis, illness or death of the: employee's spouse or same-sex partner, parent, step-parent, child, step-child, brother, sister, grandparent, step-grandparent, grandchild, step-grandchild, child's spouse or same-sex partner, father or mother of spouse or same-sex partner and any relative dependent on the employee for care or assistance.

**b) Pregnancy and Parental Leave**

- The current pregnancy and parental leave provisions would remain largely unchanged.
- The government will monitor the proposed federal amendments to Employment Insurance parental benefits to determine the impact on provincial standards.

***Questions for Discussion***

1. ***What rules should apply to the family leave provision?***
2. ***How would you define "family crisis"?***
3. ***Does the proposed family leave provision adequately cover situations where an employee would be required to take time off work to deal with a critical family or personal matter?***
4. ***Should the government consider changing the pregnancy leave provisions to allow the leave to start at the time of a live birth, even if that occurs more than 17 weeks before the expected date of birth?***

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# B. Modernizing and Clarifying the Act

The *Employment Standards Act* and other relevant pieces of legislation have not undergone a comprehensive overhaul since they were created. One of the main objectives of this review process is to simplify the language and update the provisions, in order to make the legislation more efficient, easier to use and responsive to the rapidly changing workplaces of Ontario. These changes will encourage compliance, give both employers and employees a clearer understanding of their rights and responsibilities and enable businesses to be more competitive.

## Standards to be Updated: No Major Changes Proposed

### 1) Payment of Wages

The ESA contains a number of requirements about how and when wages should be paid. For example, it requires wages to be paid in cash or cheque; at the workplace or place agreed to by the employer and employee; and on the employee's regular pay day.

## Proposed Direction:

Consistent with the intent to create a modern and efficient act and recognizing that electronic technology facilitates business and personal transactions, the government proposes to amend the payment of wages provisions to allow for the direct deposit of wages without requiring the employee's agreement.

***Questions for Discussion***

1. ***What other changes, if any, to the payment of wages provisions should the government consider in designing a new act?***

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### 2) Termination and Severance

The ESA requires that proper written notice of termination be given. Where the employer does not provide notice, termination pay in lieu of notice must be provided. Except in cases of mass termination (where more than 50 employees are being terminated), the amount of notice depends on the length of service the employee has with the employer. Notice requirements range from one week (employed three months, but less than a year) to eight weeks (employed eight years or more). The mass termination provisions require the employer to provide eight, twelve or sixteen weeks of notice depending on the number of employees to be terminated.

The current ESA also requires severance pay to be given to employees with five or more years of service who are terminated by:

- Mass termination as a result of a plant closure or the end of a business;
- An employer with an annual payroll of $2.5 million or more.

The current severance provisions require one week's regular pay for each year of employment with the employer to a maximum of 26 weeks.

Notice of termination provisions give employees time to undertake job search activities or skill development to obtain alternate employment. Severance pay recognizes the years and effort a long-service employee puts into a business by compensating them for the value of their seniority and firm-specific skills.

Most other jurisdictions have notice of termination provisions similar to Ontario's.

## Proposed Direction:

The government is proposing to make no major changes to the notice of termination and severance provisions in the act. A number of minor changes would be made to ensure greater consistency in definitions and application of the termination and severance provisions.

***Questions for Discussion***

1. ***What changes, if any, should the government make to the notice of termination and severance pay provisions of the ESA?***

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## Coverage of the Act: Exemptions and Special Rules

The current ESA applies to almost all employees and employers in Ontario. Certain high school and college students in work experience programs, participants in community participation under Ontario Works, inmates of provincial correctional facilities and certain offenders in work programs are presently excluded from the ESA. In addition, a complex series of exclusions and exemptions exists which either remove certain employees or types of work from coverage of some standards or provide for special treatment. These various exclusions and exemptions make it difficult for employers and employees to know what their obligations or rights are. In addition, inconsistencies in the ESA result in unequal treatment of some employees.

### 1) Access to the Act

Currently in Ontario, as in most jurisdictions, the way in which the employment relationship is defined determines whether or not employees have access to the minimum floor of rights and entitlements in the ESA. Dramatic changes, however, in the nature and forms of the employment relationship call these traditional definitions into question. The increased prevalence and use of "contingent" employees, such as part-timers, casuals, homeworkers or teleworkers, and agency-supplied temps signal an important shift from the traditional forms of work and employment relations of the past. While there is no intention to cover independent contractors under a new act, the definition of "employee" needs to be reviewed in light of new employment relationships and work arrangements.

## Proposed Direction:

A new act would take changes in the nature of work and employment relationships into account and would provide for future developments in the way work is organized by:

- Updating, clarifying and simplifying definitions to reflect new work arrangements.

***Questions for Discussion***

1. ***What characteristics of work arrangements would suggest that an employment relationship exists/does not exist?***
2. ***How would you define "employee", "homeworker" and "employer" in a new act?***

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**2) Exemptions**

The basic premise behind the current ESA is that all employees and employers, with limited exceptions, should be covered by the Act. The number and complexity of exclusions and exemptions, however, result in the partial exclusion of more than 20% of Ontario employees. The rationale for these exemptions, as well as the way in which these exemptions are provided in the ESA, need to be reconsidered to ensure their continued relevance to a modern workplace and workforce.

## Proposed Direction:

Although the basic premise still applies, it is recognized that one set of standards cannot satisfactorily address the diverse nature of work, employment relationships, occupations and workplaces in the Ontario economy. Exemptions or special treatment are still necessary to ensure that a new act reflects current and future workplace characteristics. The government is proposing to adopt a policy for assessing whether certain employees or types of work should be exempt from parts of the act. The policy would be used to re-evaluate current exemptions and assess any suggestions for exemptions brought forward from employers and employees.

The government is proposing to take the following into consideration when determining exemptions or special treatment:

- Other legislation governing the employment relationship which applies to the individual or type of work. For example, truck drivers and firefighters also have certain conditions of employment set out in other laws.
- Existing sets of rules that apply to the employment relationship that meet or exceed the standards set out in the act.
- Employment relationships where there is a reasonable balance of power and the individual is not, nor likely to be, in a vulnerable position. For example, lawyers, doctors, dentists and other highly paid professionals are likely to be able to negotiate working arrangements that exceed basic employment standards.
- Compelling economic or cost arguments that indicate an industry is placed in a serious competitive disadvantage by the application of a provision or provisions.
- Emergency situations which require special treatment or temporary exemption from one or more standards.

The government also intends to ensure greater consistency and clarity in exemptions that would be contained in a new act. The goal would be to ensure that employers and employees clearly understand, and can easily identify, what responsibilities and rights apply to them.

***Questions for Discussion***

1. ***Is the proposed policy for determining whether an occupation or type of work should be exempted from a particular employment standard appropriate? What other issues should be considered?***
2. ***Are there certain occupations or types of work that should be considered as part of a new list of exemptions?***
3. ***How could exemptions from parts of a new act be organized so that employers and employees easily understand them?***

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## Structural, Administrative and Enforcement Provisions

### 1) Administration

The Employment Standards Program of the Ministry of Labour administers the ESA. The Act sets out provisions for its administration, including the powers of the Minister, Director, Employment Standards Officers and the Ontario Labour Relations Board.

These provisions specify how claims may be filed, detail the investigative process, the issuing of Orders to Pay and the mechanism for reviewing Orders. A $10,000 cap on Orders to Pay was introduced to make more efficient use of ministry resources. To eliminate duplication and encourage self-reliance, non-unionized employees are required to decide within two weeks of filing a claim whether they wish to maintain the claim with the ministry or take the matter to court. Unionized employers must use their grievance procedure to address concerns or issues.

## Proposed Direction:

Standards provided for in the new act would be clear and easy to understand. Administrative procedures would be more efficient and fair. Consideration would be given to eliminating approvals for variations from standards such as reduced eating periods or extended temporary layoffs. Rules for the filing of claims, conduct of hearings, investigations as well as settlement and review processes would be reviewed with the aim of making them clearer and eliminating red tape.

***Questions for Discussion***

1. ***How could the procedures for filing claims, investigations and the review process be simplified and made more accessible for employees and employers?***
2. ***Could settlement processes under the Act be improved? If so how?***

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### 2) Enforcement

The ESA is enforced mainly through a complaints-based process. Individual employees make a claim with the Ministry of Labour. An Employment Standards Officer investigates the claim and makes a decision on whether or not the Act has been violated. If the Officer finds a violation he or she can issue an Order to Pay or facilitate a settlement. In certain circumstances, such as a violation of the pregnancy or parental leave provisions, the Officer may order reinstatement of an employee as well as compensation.

Employers may apply for review of a decision of an Officer. They do so by filing with the Ontario Labour Relations Board (OLRB). The OLRB requires that employers and employees meet with a Labour Relations Officer who will attempt to resolve the dispute without a hearing. The vast majority of claims are resolved

without a hearing.

Other jurisdictions in Canada have enforcement regimes similar to those in Ontario.

## Proposed Direction:

A primary goal is compliance with the ESA. The government believes that economic and social benefits of competitive workplaces, quality jobs and a high standard of living can be achieved when employers and employees understand and comply with the ESA.

A modernized *Employment Standards Act* would focus on ensuring that workplace parties have the information and tools they need to comply with the act. It would encourage employers and employees to become more self-reliant and to seek to resolve disputes internally before involving the Ministry of Labour.

At the same time, strict enforcement mechanisms would be in place to deal with those who continue to operate in violation of the law. The actions of these individuals or organizations have negative economic and social consequences that limit Ontario's ability to be competitive. Repeat offenders, in particular, would be dealt with severely.

In designing a new act that encourages compliance the government proposes to introduce the following:

- Escalating monetary penalties for violations of the act.
- A new anti-reprisal provision to allow Employment Standards Officers or Labour Relations Officers to reinstate and/or to compensate employees who were terminated, disciplined or otherwise penalized for exercising their rights under the Act.

***Questions for Discussion***

1. ***Would the introduction of escalating monetary penalties encourage compliance?***
2. ***Would an anti-reprisal provision improve compliance with the Act? Who should be given the power to reinstate and/or compensate under this provision: Employment Standards Officers or the Ontario Labour Relations Board?***
3. ***Would the introduction of an internal dispute resolution system for non-unionized workplaces assist employers and employees to resolve disputes before involving the Ministry of Labour? What would such a system look like?***

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### 3) Other Workplace Standards

In addition to the *Employment Standards Act*, some Ontario workplaces are also governed by: the *Industrial Standards Act*, the *Employment Agencies Act*, or the *One Day's Rest in Seven Act*. Under the *Government Contracts and Hours of Work Act* wages and hours of work could be regulated for workers employed on government construction contracts.

These acts have also been comprehensively reviewed to determine their continued relevance to modern workplaces and workforces. The government is proposing to repeal these acts, as part of the modernizing

and simplifying process.

### The *Industrial Standards Act*

The *Industrial Standards Act* (ISA) was created in 1935 to stabilize certain industries by reducing wage-cutting and exploitative working conditions. It allows non-unionized and unionized employers and employees in an industry to establish a set of employment standards above the minimum standards set out in the ESA, which are tailored to meet the needs of the industry or sector.

The ISA originally covered many industries, but with the creation of the ESA it fell largely into disuse. Currently, only two industries use the ISA: the women's coat and suit industry and the women's dress and sportswear industry.

## Proposed Direction:

The government believes in streamlining employment-related laws and in removing unnecessary regulation and duplication wherever possible. Accordingly, the government intends to repeal the *Industrial Standards Act*.

Transitional provisions would permit those sectors of the garment industry currently governed by schedules under the ISA to move toward full coverage under a new act.

***Questions for Discussion***

1. ***If the ISA is repealed, what transitional arrangements would be necessary for those sectors of the women's garment industry currently covered by the Act?***
2. ***Should a new act allow for special sectoral arrangements? If so, how?***

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### The *Employment Agencies Act*

The *Employment Agencies Act* (EAA) applies to permanent employment placement agencies, which bring together individuals seeking jobs and potential employers. The legislation does not apply to temporary help agencies, which contract out workers to various organizations. The relationship between the temporary help agency and the worker is that of employer and employee, and is governed by the *Employment Standards Act*.

The EAA deals mainly with requirements for employment agencies to obtain an operating license from the Ministry of Labour. A license may be refused if the company's past conduct reasonably suggests that the company will not carry on its business in accordance with the law and with honesty and integrity, or if there is some question about the financial viability of the company. The EAA also limits or prevents employment agencies from charging a fee to individuals who are seeking a job.

## Proposed Direction:

The EAA was enacted to prevent the exploitation of individuals seeking jobs, particularly during periods

where few jobs were to be found and before public institutions were established to help people in the transition from one job to another.

The Ministry of Labour has rarely received complaints under the EAA. Changes in this industry, such as the shift toward greater use of the Internet to assist in job searches, and the enactment of legislation to address discrimination, have largely eliminated the need for this Act. Accordingly, the government intends to repeal the *Employment Agencies Act*.

***Questions for Discussion***

1. ***If the Employment Agencies Act were repealed would it still be necessary to regulate or prohibit the charging of fees to job seekers who use the services of permanent employment placement agencies?***

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### One Day's Rest in Seven Act

The *One Day's Rest in Seven Act* (ODRSA) provides that, in every town having a population of 10,000 or more, hotels, restaurants, and cafes must allow their employees at least 24 consecutive hours of rest in every seven days, wherever possible on a Sunday.

## Proposed Direction:

The government believes in streamlining employment-related laws and in removing unnecessary regulation and duplication wherever possible. Under the proposed changes to hours of work provisions, noted above, the government is proposing to include in a new act a weekly rest period of 24 consecutive hours in every 7 days or 48 consecutive hours in every 14 days. Accordingly, the ODRSA could be repealed.

***Questions for Discussion***

1. ***Does the incorporation of the proposed weekly rest provisions, under the new hours of work provisions, eliminate the need for the ODRSA?***

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### *Government Contract, Hours and Wages Act*

The *Government Contract, Hours and Wages Act* (GCHWA) was passed in 1936 to establish the hours of work and wages for workers employed on government construction contracts. The GCHWA provides that anyone employed under a government construction contract must be paid fair wages. It also provides for hours of work to be set at 8 in a day and 44 in a week.

Enabling regulations were never developed, and as a result the GCHWA has been inactive.

### Proposed Direction:

Consistent with its goal to eliminate unnecessary regulation, the government proposes to repeal the GCHWA. No changes are proposed with respect to the current Fair Wage policy which is based in Orders-In-Council.

***Questions for Discussion***

1. ***Are there any issues or concerns with repealing this act?***

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# CONCLUSION

Priorities for the government include attracting jobs, promoting growth, encouraging increased productivity and investment in Ontario. The proposed directions for a new act set out in this paper would meet the government's Blueprint commitments, reduce red tape and improve flexibility for Ontario workplaces to be innovative and respond effectively to emerging opportunities.

Clarifying and simplifying the Act would give both employers and employees a better understanding of their rights and responsibilities and encourage compliance. The new act would be flexible and responsive to the changing realities of the workplaces of Ontario.

This would contribute to making Ontario one of the best places to live, work, invest and raise a family.

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# How to Provide Your Input and Comments . . .

**Public Consultations and Input**

The government is very interested in hearing your views on these proposed directions and any comments or suggestions you might have to ensure the new act is flexible, efficient and reflects the needs of modern workplaces.

Province-wide public consultations will be held in August and September of this year to gather your views. You can also write, email or fax your comments to:

**The Honourable Chris Stockwell**
**Minister of Labour**
**400 University Avenue, 14th Floor**
**Toronto, Ontario M7A 1T7**

**Attention: ESA Review Project**

**Fax: (416) 326-9542**
**Toll free fax: 1-877-562-2206 (outside the 416 area code)**
**Email: esaproject@mol.gov.on.ca**

For additional copies of this paper call (416) 326-6643, visit your local Ministry of Labour Office or see the Ministry of Labour's Web site at http://www.gov.on.ca/lab/es/ese.htm

**ALL COMMENTS AND SUBMISSIONS MUST BE RECEIVED BY**

**FRIDAY, SEPTEMBER 29, 2000.**

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**Ministry of Labour** **Ministère du Travail**

July 26, 2000 00-39

# ONTARIO GOVERNMENT RELEASES EMPLOYMENT STANDARDS CONSULTATION PAPER

The government's modernization of the *Employment Standards Act* (ESA) and related workplace legislation begins today with the release of a consultation paper, which will form the basis for province-wide public discussions in August and September.

The ESA sets out basic working conditions including hours of work, vacation and public holidays, pregnancy and parental leave.

The paper gives Ontarians a chance to take part in the renewal of the ESA. All employers, employees, homeworkers, part-time/casual workers and employees' representatives are directly affected by these laws.

**Why is the government doing this review?**

The review has two objectives: to fulfil the government's Blueprint commitments and to modernize and clarify the current legislation.

Today's workplaces are constantly changing as employers and employees rise to new challenges and seize fresh opportunities for growth.

Our government has heard from many employees and employers who have told us:

- The *Employment Standards Act*(ESA) is cumbersome, complicated and confusing.
- It is filled with language, concerns and approaches that are outdated and lacks the flexibility needed in today's workplaces.

Our government is committed to modernizing the ESA as a foundation for increased productivity, job creation, growth and investment. Creating opportunities for flexible work arrangements, simplifying the ESA and reducing red tape will have a positive impact on Ontario's economy by making business more competitive.

**What are the Blueprint commitments concerning workplace standards?**

In our election Blueprint document, this government promised employees and employers more flexibility in designing hours of work and a family leave provision which will enable Ontarians to balance their work and personal lives. We are proposing to provide:

- Employers and employees with the opportunity to design work arrangements such as flex-time that fit their business and personal needs;
- Employees with up to 10 unpaid days per year of job-protected family crisis leave in workplaces of more than 50 employees.

**About Ontario's current employment standards legislation**

*The Employment Standards Act* (ESA) is the legislation that sets out many of the basic rules for working in Ontario. It was created in 1968 by combining several earlier laws that regulated aspects of the employment relationship. It sets out who is covered by the legislation and outlines basic standards of employment (e.g. hours of work, vacation and public holiday entitlements, rights to pregnancy and parental leave).

The Act is enforced by the Ministry of Labour, the courts, and through the grievance procedure in unionized workplaces. In addition to the ESA, there are a number of related Acts under review.

Despite attempts at reform by previous governments, the ESA has not been comprehensively modernized since 1974. Consequently, there is a need for a thorough review and an expectation of broad reform among most stakeholders.

Five hundred Ontario businesses and institutions surveyed for the Red Tape Commission identified reform of the ESA as a top priority to improve the province's competitive status as a place to invest.

In 1996, a number of changes were made to the ESA under Bill 49, An Act to Improve the *Employment Standards Act*. These changes were aimed at improving the effectiveness and efficiency of administering the ESA. In 1998, the government continued the dialogue on change with the release of the Future of Work in Ontario discussion paper.

The government will modernize and clarify the ESA to promote greater compliance by all workplace parties, enhanced protection for workers and a more level playing field for employers. To achieve these objectives, employment standards legislation needs to be flexible, modern, efficient, and fair.

**Summary of proposed changes:**

The changes being proposed by the government include:

- More flexible rules for hours of work, rest periods, and overtime arrangements;
- Simpler rules for vacations and work on public holidays;
- Provision for family leave;

- Improved, clearer definitions and procedures; and,
- Monetary penalties for violations, and anti-reprisal provisions.

**About the public consultations and input**

Province-wide consultations will be held in:

- **Toronto, Aug. 23 and 24**
- **Windsor, Aug. 28**
- **Thunder Bay and Sudbury, Aug. 31**
- **Ottawa, Sept. 8**

Parties interested in making presentations at the consultation sessions must register in advance by contacting the Ministry of Labour, Employment Standards Act Project Team at (416) 326-6643.

The full consultation paper is available on the Ministry website, at Ministry of Labour regional offices and at Government Information Centres.

-30-

**Contact:**
Belinda Sutton
Communications & Marketing Branch
Ministry of Labour
(416) 326-7405

Related Documents: Time For Change: Ontario's Employment Standards Legislation

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Aug. 30, 2000 00-47

# EMPLOYMENT STANDARDS REFORM: BENEFITS TO EMPLOYEES

The government has proposed changes to modernize and simplify Ontario's *Employment Standards Act*. The aim is to create legislation that will fairly and accurately reflect workplaces in Ontario in the 21st century.

Key proposals of benefit to employees:

**Family Crisis Leave:**

- The government proposes to provide family crisis leave for employees. In workplaces of 50 or more employees, up to 10 days unpaid, job protected leave per year would be granted in cases of family illness or other crisis. We are also considering offering leave on a sliding scale for workplaces of less than 50 employees.

**Anti-Reprisal:**

- The government proposes a new anti-reprisal provision with more easily enforced rights to reinstatement and compensation when an employer has disciplined or fired an employee for exercising his or her rights under the Act.

**Fines for Employers:**

- A set of escalating monetary penalties which can be imposed by the Ministry is proposed for employers who repeatedly contravene the Act. These penalties would encourage all employers to treat their workers fairly and to obey the law.

**Increased Flexibility of Work Hours:**

- Working Monday to Friday, 9-to-5 is not the norm for as many workers as it used to be. Recognizing this, the government proposes to revise provisions on hours of work and vacation to increase flexibility for employees and let them (with their employer's agreement) design schedules that meet their business and personal needs.

**Public Holidays Simplified:**

- Rules about public holidays would be simplified to enable more employees to qualify for a holiday (e.g. part-time employees who work two days a week would be entitled to a public holiday. Right now, they are not). The public holiday pay for such employees would be pro-rated. Proposed changes would also provide greater flexibility for employees to choose either overtime pay or an alternative day off when a holiday is worked.

The full consultation paper is available on the Ministry Web site, at Ministry of Labour regional offices and at Government Information Centres.

**Media Contact:**

Belinda Sutton
Communications and Marketing Branch
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(416) 326-7405

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# EMPLOYMENT STANDARDS REFORM: HOURS OF WORK

Attempting to balance the needs of life at home and life at work is more complicated and demanding than ever.

At home, you may have responsibility for aging parents, young children or a host of other things that can make it difficult to fit into a workplace that doesn't offer flexible and adaptable work arrangements (e.g. working hours).

And at work, there are more demands for flexibility because of market pressures, new manufacturing processes or intensive requirements of high-technology industries and the trend toward 24-hour-a-day, 7-day-a-week business hours.

While it is clear that both employers and employees need flexibility to survive and thrive today, the current provincial law governing working conditions is so complex that it does not offer enough flexibility to meet today's needs.

That's one reason the government is moving to modernize and simplify the *Employment Standards Act* through proposals put forward in a July 26 consultation paper.

***Overtime and hours of work protections remain strong.***

***Basic rules about hours of work and overtime will NOT change.***

***Employees will still have the right to refuse to work more than 48 hours in a week.***

**Overtime at the rate of time-and-a-half will still be payable after 44 hours in a week.**

We propose to **add** that employees and employers may agree that overtime be taken either as overtime pay or time-in-lieu after 44 hours.

**Flexibility in hours of work**

Under the government's proposal:

- The system requiring a Ministry of Labour permit for flexible work hours will be eliminated. Employees and employers will now be able to design work hour arrangements on their own so long as the hours worked, when averaged over a three week period, do not exceed 60 per week. Both the hours and the averaging must be by mutual agreement. These arrangements would be subject to mandatory daily and weekly hours of rest.

- ***Both employers and employees must agree to these sorts of arrangements. Neither one can force them into place.***

- Examples:

  An employee who normally works from Monday to Friday, 9 a.m. to 5 p.m., wishes to work from Monday to Thursday, 8 a.m. to 6 p.m., and take Fridays off. Right now, this would require a government permit (for a workday longer than 8 hours). Our proposal would eliminate the permit and leave it strictly up to the employee and employer to decide if the arrangement would work out. It's faster and easier this way.

  An employer needs an employee to work 13-hours a day for one week (Monday-to-Friday) to complete a special project. The employer and employee can agree on a shortened work schedule for the employee the next week.

**Strengthening anti-reprisal penalties**

The proposals also deal with concerns that employers may force employees to agree to work excess hours (i.e. more than 48 hours per week) or to average their total hours over three weeks. The paper proposes new, stronger penalties for employers who violate the Act including:

- escalating monetary penalties and,
- new anti-reprisal mechanisms that could allow for reinstatement and compensation for employees.

**Consultations**

The government is currently conducting a review of the *Employment Standards Act* to fulfill its *Blueprint* commitments made during the past election and to modernize and clarify the current laws.

Input on changes such as the new hours of work provisions is being gathered through public consultations across the province and through written submissions made to the Ministry of Labour. Written submissions are being accepted until Sept. 29. Submissions can be sent to:

The Honourable Chris Stockwell
Minister of Labour

400 University Ave.
14th Floor
Toronto, ON M7A 1T7
Fax to: (416) 326-9542
Email: esaproject@mol.gov.on.ca

The review will result in new legislation.

The full consultation paper is available on the Ministry Web site, at Ministry of Labour regional offices and at Government Information Centres.

**Media Contact:**

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